

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2971/2018

M.Usha .. Petitioner/Mother of the Detenu
vs.

- 1.The State of Tamil Nadu
rep. by the Secretary to the Government
Home, Prohibition and Excise Department
Fort St.George, Chennai 600 009.
- 2.The Commissioner of Police,
Greater Chennai City,
Vepery, Chennai-600 007. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the son of the petitioner, Suresh @ Sureshkumar, aged 23 years before this Court, now confined in the Central Prison, Puzhal, Chennai and set him at liberty and to call for the records pertaining to the Memo No.1084/BCDFGISSSV/2018 dated 27.11.2018 and set aside the same.

For Petitioner .. Mr.C.K.M.Appaji
For Respondents.. Mr.C.Iyyappa Raj, APP
Additional Public Prosecutor

सत्यमेव जयते
ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J)

The petitioner is the mother of the detenu viz., Suresh @ Sureshkumar, aged about 23 years, herein and challenging the legality of the impugned order of detention dated 27.11.2018 passed by the 2nd respondent, in and by which, the detenu has been branded as a 'GOONDA' under the provisions of section 3 [1] of the Tamil Nadu Prevention of dangerous activities of Boot leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), came forward to file the present habeas corpus petition.

2 As per the Grounds of Detention dated 27.11.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases:-

i) Adverse cases:

Sl No .	Name of the Police station and Crime No.	Section of law
1	T-10 Thirumullaivoyal Police Station Cr.No.778/2017	147, 148, 341, 302 and 149 IPC
2	K-2 Ayanavaram Police Station Cr.No.141/2018	341, 294 (b), 324, 506 (ii) IPC

3 It is further averred in the Grounds of Detention that the defacto complainant, viz., Mr.Senthilkumar, son of Pandarinathan, a resident of Ayanavaram, Chennai-23, has lodged a complaint on the morning hours on 03.11.2018 to K2 Ayanavaram Police Station stating among other things that he was in search of a painter to paint his house and when he noticed the detenu, he enquired him as to whether he would come and paint his house and the detenu demanded Rs.5000/- and when the defacto complainant replied that he would pay the money after the completion of the work, immediately, the detenu wrongfully restrained and abused the complainant and also asked him to take out the money and also disclosed his identity and brandished a knife and snatched a sum of Rs.1000/- from his shirt pocket and also threatened him with dire consequences. When the defacto complainant raised an alarm, the public gathered and they were also threatened with dire consequences and in the process, he fled away from the scene of crime. The Sub Inspector of Police attached to K2 Ayanavaram Police Station registered a case in crime No.539/2018 for the commission of the offences u/s.341, 294[b], 323, 392, 336, 397 & 506[ii] IPC [ground case] and took up the case for investigation. During the course of investigation, the Inspector of Police, arrested the detenu on 03.11.2018 at about 14.00 hours and the detenu voluntarily came forward to give a confession statement which was recorded in the presence of witnesses and in pursuant to the admissible portion of the same, incriminating articles were recovered. The detenu was produced before the Court of V Metropolitan Magistrate, Egmore at Allikulam on 03.11.2018 and was ordered to be remanded to judicial custody till 16.11.2018 and his remand period was further extended till 30.11.2018. The Detaining Authority on a perusal and consideration of the materials has derived the subjective satisfaction that the activities of the detenu are prejudicial to the maintenance of public order and peace and as such, branded him as a 'Goonda' and detained him under the provisions of the Tamil Nadu Act 14 of 1982, by clamping the

impugned order of detention and challenging the legality of the same, the present petition is filed.

4 The learned counsel for the petitioner has drawn the attention of this Court to paragraph No.4 and would submit that admittedly, the detenu is in custody in connection with two adverse cases as well as in the ground case and in order to derive the subjective satisfaction, the Detaining Authority has placed reliance upon the orders granting bail in similar cases, viz., [1] CrI.MP.No.270/2016 concerned in F-4 Thousand Lights Police Station Crime No.129/2016 and [2]CrI.MP.No.8030/2018 concerned in K2 Ayanavaram Police Station Crime No.273/2018 and the said cases cannot be said to be similar cases for the reason that one case, the Prosecutor did not come out with any instructions and in the other case, considering the period of incarceration the concerned accused was enlarged on bail and in both cases concerned, the accused have not been visited with any bad antecedents and therefore, the subjective satisfaction derived by the Detaining Authority in that regard is vitiated and therefore, prays for quashment of the impugned order of detention.

5 Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority, after due and proper application of mind and on thorough consideration and appreciation to the entire materials, has rightly clamped the order of detention and prays for dismissal of this petition.

6 This Court has considered the rival submissions and also perused the materials placed before it.

7 As rightly pointed out by the learned counsel for the petitioner, a perusal of the two orders, which are quoted as similar orders and available at page Nos.133 and 165 of the Booklet, would disclose that in the first case, the prosecution has failed to give any instructions and in the second case, considering the period of incarceration, the concerned accused were granted bail and in both cases concerned, the accused have not been visited with any adverse cases or bad antecedent and as such, the subjective satisfaction derived by the Detaining Authority, as to the real and imminent possibility of the detenu coming out on bail and indulging in activities which are prejudicial to the maintenance of public order and peace, is vitiated and hence, on this sole ground, the detention order, impugned herein, is liable to be set aside.

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated

27.11.2018 is hereby set aside. The detenu who is now confined in the Central Prison, Puzhal, Chennai is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Secretary to the Government
State of Tamil Nadu,
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police,
Greater Chennai City,
Vepery, Chennai-600 007.
- 3.The Public Prosecutor,
Madras High Court, Madras.
- 4.The Superintendent
Central Prison, Puzhal, Chennai-66.
- 5.The Joint Secretary to Government,
Public Law and order, Fort st George,
Chennai-9.

H.C.P.No.2971/2018

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srg 27/06/2019

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